



cation, use, and disposal of Noxtane. Koppers moved for summary judgment, arguing that LP's claims were time-barred; LP could not establish factual elements essential to its claims; and LP's claims were preempted by FIFRA. The trial court granted summary judgment on the sole basis of FIFRA preemption, declining to reach Koppers' other arguments.

Among other things, the First District explained that FIFRA expressly addresses the extent to which states may regulate pesticides, stating that "[a] State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter." FIFRA also states that "[s]uch State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter." The First District explained that the question before it is whether the section demonstrates a congressional intent to preempt common law actions based on theories of failure to warn. After reviewing the U.S. Supreme Court's *Cipollone* decision (see above), the First District held that FIFRA preempts LP's failure to warn claims based on inadequate labels or packaging.

On February 8, U.S. District Court Judge William B. Shubb approved a settlement agreement which will phase out about 34 cancer-causing chemicals and—potentially—87 more pesticides currently listed as carcinogens by EPA. The settlement agreement arose out of *California v. EPA*, No. 89-0752, in which the state of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO and others charged that the so-called "Delaney Clause" of the federal Food, Drug and Cosmetic Act prohibits EPA from setting pesticide residue tolerances for processed foods if the pesticides in question have been found to cause cancer. [15:1 CRLR 137-38] Specifically, the settlement requires that 34 chemicals be phased out of processed foods within two years and no longer used directly on crops within five years. It also requires EPA to analyze its list of 87 carcinogens within five years; if any of the pesticides are found in processed foods, EPA will have two years to phase it out and five years to phase out direct contact to crops.

RECENT MEETINGS

At the January 20 PAC meeting, a presentation on environmental justice was made by Carl C. Kohnert, Jr., Deputy Director of the Air and Toxics Division at EPA's Region IX; according to EPA, environmental justice seeks to assure equal

environmental protection to all segments of the public, so that no segment of the population bears an undue burden of environmental pollution. Through the Superfund Program, which involves EPA in the cleanup of hazardous waste sites, EPA has become aware that a disproportionate share of hazardous waste sites are located in areas with low-income and minority populations. In February 1994, President Clinton signed an executive order to increase attention to certain provisions of existing laws, such as the Civil Rights Act, which may help ensure that all communities live in safe and healthful environments. The federal government will be giving \$3 million worth of grants to communities to help implement environmental awareness and training programs for residents. Also, DPR now must include an environmental justice component as part of any federal grants for which it applies.

FUTURE MEETINGS

DPR's PAC, PREC, and PMAC meet every two months to discuss issues of practice and policy with other public agencies; the committees meet at 1020 N Street in Sacramento.

WATER RESOURCES CONTROL BOARD

Executive Director: Walt Pettit

Chair: John Caffrey

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The state Water Resources Control Board (WRCB) is established in Water Code section 174 *et seq.* The Board administers the Porter-Cologne Water Quality Control Act, Water Code section 13000 *et seq.*, and Division 2 of the Water Code, with respect to the allocation of rights to surface waters. The Board, located within the California Environmental Protection Agency (Cal-EPA), consists of five full-time members appointed for four-year terms. The statutory appointment categories for the five positions ensure that the Board collectively has experience in fields which include water quality and rights, civil and sanitary engineering, agricultural irrigation, and law.

Board activity in California operates at regional and state levels. The state is divided into nine regions, each with a regional water quality control board (RWQCB or "regional board") composed of nine members appointed for four-year terms. Each regional board adopts Water Quality Control Plans (Basin Plans) for its area and performs any other function concerning

the water resources of its respective region. Most regional board action is subject to State Board review or approval.

The State Board has quasi-legislative powers to adopt, amend, and repeal administrative regulations for itself and the regional boards. WRCB's regulations are codified in Divisions 3 and 4, Title 23 of the California Code of Regulations (CCR). Water quality regulatory activity also includes issuance of waste discharge orders, surveillance and monitoring of discharges, and enforcement of effluent limitations. The Board and its staff of approximately 450 provide technical assistance ranging from agricultural pollution control and waste water reclamation to discharge impacts on the marine environment. Construction loans from state and federal sources are allocated for projects such as waste water treatment facilities.

WRCB also administers California's water rights laws through licensing appropriate rights and adjudicating disputed rights. The Board may exercise its investigative and enforcement powers to prevent illegal diversions, wasteful use of water, and violations of license terms.

In March, Governor Wilson appointed Marc J. Del Piero to a second four-year term on the Board; Del Piero was previously a Monterey County Supervisor. His term will expire on January 15, 1999.

MAJOR PROJECTS

Bay/Delta Plan Moves Toward Adoption. The water quality control plan that promises to play an important role in ending California's "water wars" and solving serious environmental and water shortage problems in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay/Delta) is one step closer to adoption. In December 1994, WRCB released a draft Water Quality Control Plan for Salinity (Bay/Delta Plan) which outlined water quality standards and incorporated the *Principles for Agreement* signed by state and federal officials and key urban, agricultural, and environmental interests. [15:1 CRLR 138-39] On January 23, the Board released a draft environmental report which documents its analysis of the effects of implementing the draft plan.

On February 23, WRCB held a public hearing to receive comments and recommendations on the draft plan and environmental report. More than 200 people attended the hearing, with the majority of speakers expressing support for the plan. Among dissenters were representatives of the Stockton Water District, who complained that many water districts were not "at the table" when the plan was drafted and that water rights allocation issues



should not be addressed in a water quality plan. Groups voicing support for the plan included the Joint California Water Users Group, a collection of the state's largest water users/distributors which includes the Metropolitan Water District of Southern California, the Los Angeles Department of Water and Power, the Municipal Water District of Orange County, the San Diego County Water Authority, the San Francisco Public Utilities Commission, the East Bay Municipal Utility District, and Santa Clara Valley Water District.

The comment period, during which recommendations were received from 41 different agencies and individuals, closed on March 10. WRCB incorporated the comments into a revised draft plan, which was released to the public on May 8. The revised document identifies a multitude of beneficial uses to be protected by the plan, including municipal, industrial, agricultural, and fish and wildlife uses; it sets forth the water quality objectives necessary to provide that protection. In addition, the document outlines the following program of implementation:

• **Implementation measures within WRCB's authority over water diversion and use.** WRCB's primary method for implementing the plan is via a water rights proceeding wherein water rights will be reallocated among permit holders in the Delta to meet water supply objectives for Delta outflow, river flows, export limits, and salinity controls for the protection of municipal and industrial supply, agricultural supply, and fish and wildlife.

• **Implementation measures requiring WRCB water quality and water rights authority as well as multi-agency cooperation.** The plan details the following four water quality objectives which will require measures by WRCB in concert with other agencies for implementation: the dissolved oxygen objective for the San Joaquin River, a major Delta tributary; objectives for salmon protection; objectives for the tidal brackish marshes of Suisun Bay; and salinity objectives for southern Delta agriculture.

• **Recommendations to improve habitat conditions.** Since WRCB has jurisdiction only over water quality and water rights, the recommendations in this section are aimed at the Department of Fish and Game (DFG), the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), the U.S. Bureau of Reclamation (USBR), the Department of Water Resources (DWR), and other agencies with authority to regulate in the area of habitat restoration. WRCB recommends that the appropriate agencies reduce losses of all life stages of fish to

unscreened water diversions; reduce entrainment by, and improve fish survival at, the State Water Project (SWP) and Central Valley Project (CVP) export facilities; review and modify, if necessary, existing commercial and sport fishing regulations; reduce illegal fishing; evaluate the effectiveness of gates or other barriers as a means of improving fish survival in the Delta; reduce the impacts of introduced species on native species in the Estuary; improve hatchery programs for salmon and other species of concern; minimize losses of salmon and steelhead due to flow fluctuations; expand the gravel replacement and maintenance programs for salmonid spawning habitat; evaluate alternative water conveyance and storage facilities of the SWP and CVP in the Delta; develop an experimental study program on the effects of pulse flows on fish eggs and larvae in the Delta; implement actions needed to restore and preserve marsh, riparian, and upland habitat in and upstream of the Delta; implement temperature control measures to reduce adverse impacts on salmon and steelhead; and implement measures to appropriately control Suisun Marsh soil and channel water salinities.

At this writing, the Board is scheduled to adopt this plan on May 22. Once adopted, WRCB will submit required portions to the U.S. Environmental Protection Agency (EPA) for review; if EPA approves the plan and finds that it provides beneficial use protection equivalent to the protection provided by EPA under the Clean Water Act, EPA will begin the process of withdrawing its own Delta standards. [15:1 CRLR 139]

Implementation of the Bay/Delta Plan will occur through a combination of water quality and water rights actions. During June and July 1995, WRCB is expected to initiate water rights proceedings to allocate the water needed to meet the plan's requirements. The water rights proceedings will establish terms and conditions via water rights permits for meeting plan objectives. The permits of water rights holders in the Bay/Delta Estuary watershed will be amended so that the supply-related objectives contained in the plan can be met. The final water rights decision is expected by June 1998—eleven years after the commencement of this proceeding.

In a related matter, Lester A. Snow was named the first manager of the California Water Policy Council and Federal Ecosystem Directorate (CalFED), the consortium of state and federal officials which is overseeing implementation of the *Principles of Agreement* regarding the Bay/Delta. Snow, previously general manager of the

San Diego County Water Authority, has called this effort California's last chance to manage the Delta properly.

Snow heads one of three groups within CalFED, all of which are involved in some part of the Bay/Delta solution process. Snow's group is directed to come up with a long-term fix for the Delta's systemic problems, according to Tom Howard of WRCB's Bay/Delta unit. Thus, while the Bay/Delta plan being developed by WRCB sets flow requirements and Delta configurations, Snow's group will be looking at possible solutions which extend beyond flow requirements. Such solutions could involve anything from constructing canals to enlarging channels to engineering diversions, according to Howard. Such action is not within WRCB's jurisdiction, which is limited to water quality control and water rights allocation.

The other two CalFED groups are comprised of federal and state representatives from WRCB, DWR, USBR, DFG, NMFS, USFWS, and EPA. These groups are involved in an ongoing effort, as provided by the *Principles for Agreement*, to identify, fund, and implement measures to address the broader non-flow-related factors affecting water quality and habitat in the Delta. The first group, known as CalFED's "Ops Group," consists of mid-level supervisors from each agency who, according to Howard, meet monthly to make "real time" decisions about managing the Estuary and its watershed. "Ops Group" deliberations are conducted in consultation with water users, environmental, and fishery representatives. [15:1 CRLR 139] The other CalFED group is a policy committee which oversees "Ops Group" activities. These groups will determine priorities and financial commitments for implementing Bay/Delta protection activities.

WRCB Holds Hearing to Consider Immediate Changes in Federal/State Water Rights Permits Necessitated by Bay/Delta Plan. On April 18, WRCB held a hearing to consider a petition for changes in water right permits for the SWP operated by DWR, and the CVP operated by USBR. SWP and CVP are the two major water distribution systems which release stored water into and divert water from the Bay/Delta.

In January, both systems began operating under the water quality standards set forth in the *Principles for Agreement*, the December 1994 standards incorporated into the draft Bay/Delta plan which is currently being considered for adoption (see above). Thereafter, DWR and USBR petitioned for several changes in their water rights permits to remove conflicts between



the standards that both agencies are required to meet under previous water rights decisions and the standards they have agreed to meet under the *Principles for Agreement*. The draft plan and previous water rights decisions differ in their approaches to protecting beneficial uses; consequently, if DWR and USBR follow the plan, they will violate the standards they are required to meet under their existing water rights permits.

At this writing, WRCB expects to take action on the petition in late May, after the Bay/Delta plan is adopted.

Task Forces Begin Work on New Statewide Water Quality Control Plans. In April, WRCB revised its schedule for the adoption of a new Inland Surface Waters Plan (ISWP) and a new Enclosed Bays and Estuaries Plan (EBEP), both statewide water quality control plans. After an organizational meeting in December, the Board directed task forces to meet from January to June to gather information on acute and chronic toxicity objectives; aquatic life and human health chemical-specific numeric objectives; permit and compliance issues; effluent-dependent ecosystems; agricultural waters (constructed and natural); site-specific objectives policy; economic considerations; and nonpoint sources of pollution. [15:1 CRLR 139] However, the process was delayed while WRCB secured funding and found professional facilitators to assist the task forces at their meetings. WRCB formed the task forces to assist Board staff on issues relevant to the adoption of these plans. The recommendations generated by the task forces will be considered by the Board as it prepares draft plans and a draft functional equivalent document (FED) in preparation for approving the final ISWP and EBEP.

The task forces met for the first time in April and will continue meeting throughout the summer. At this writing, general "mid-course" meetings are scheduled for June 1 and August 1 to communicate the progress of the task forces among themselves, address issues that affect more than one task force, and take public comment.

WRCB is authorized by the California Water Code to adopt water quality control plans for waters under Clean Water Act jurisdiction. In April 1991, WRCB adopted a statewide ISWP and EBEP which included water quality objectives for toxic pollutants for all inland surface waters and enclosed bays and estuaries, as required by the Clean Water Act. The ISWP and EBEP were challenged in court soon after their adoption. [11:3 CRLR 177-78] In March 1994, a superior court concluded that the plans were not adopted pursuant

to California law, and its final judgment issued in July 1994 directed WRCB to rescind the plans. [14:4 CRLR 164-65] With the September 1994 rescission of the plans, California was left without statewide water quality objectives for toxic pollutants. EPA is required to promulgate standards for any state that has not complied with CWA requirements on toxic pollutants; with the loss of the ISWP and EBEP and the water quality objectives contained in those plans, EPA has initiated the process of promulgating toxic pollutant standards for California, which will remain in effect until WRCB adopts its own plans. [15:1 CRLR 139]

The revised adoption schedule for the ISWP/EBEP proceeding is as follows: public participation/task force activities are to be held through October 1995; the draft plans are to be completed by March 1996; hearings will be held through May 1996; WRCB will respond to comments and revise the FED by June 1996; WRCB will release a revised FED and notice a workshop and Board meeting by March 1997; WRCB will hold a workshop and Board meeting by May 1997; WRCB will prepare the administrative record and submit it to the Office of Administrative Law by June 1997; and the Board will submit the plans to EPA Region IX by October 1997.

WRCB Proposes Water Quality Waiver for Compost Facilities. On May 10, WRCB held an informal workshop to allow public participation and comment regarding a proposal to waive the issuance of waste discharge requirements (WDRs) for compost facilities which pose a minimal threat to water quality. The waivers would apply to discharges of less than fifteen cubic yards of green waste, food processing waste, agricultural waste, or paper products for composting on residential property, parks, community gardens, or nurseries, and to discharges of up to 500 cubic yards of these wastes to be composted and used exclusively on a discharger's property for agricultural purposes.

The WDR waiver would be applied only to dischargers who meet specified requirements for surface water and runoff management and for groundwater quality protection. The applicable conditions are based upon the threat to water quality associated with the discharge of the type of waste to be composted. According to WRCB, adoption of a tentative order (TO) allowing for the waiver would expedite the processing of discharge applications for composting these wastes, while still ensuring water quality protection.

WRCB acknowledges, however, that discharges of food processing wastes, ag-

ricultural wastes, or paper products may contain compounds which pose a somewhat greater threat to water quality than green waste. For these wastes, the TO would require the discharger to prevent infiltration of any liquid into underlying soils, and to protect groundwater quality. According to WRCB, while the TO would add some flexibility in the permitting structure of the RWQCBs, it would not allow degradation of surface or groundwater.

In order to adopt a TO, each RWQCB must circulate an environmental document prepared in accordance with the California Environmental Quality Act (CEQA) and consider all comments pertaining to the waiver of WDRs. On behalf of the RWQCBs, WRCB staff has prepared an initial study and a proposed negative declaration assessing the potential impacts on the physical environment by the discharge of wastes included in the TO; at this writing, the public review period for the proposed negative declaration is scheduled to end on June 15.

WRCB Seeks Amendment to Resolution on Groundwater Cleanup and Abatement. On January 20, WRCB published notice of its intent to amend Resolution 92-49, its policies and procedures for investigation, cleanup, and abatement under Water Code section 13304. The proposed amendment would specify conditions under which a RWQCB may establish non-attainment zones, or areas of groundwater where water quality objectives cannot be reasonably achieved. [15:1 CRLR 142-43]

WRCB held a public hearing on the amendments on March 23, and received more than 100 comments; as a result of this response, WRCB extended the public comment period, which—at this writing—is still open. After preparing responses to the comments and revising the amendments, WRCB plans to release another draft for public review; no date for the release of the revised draft has been announced.

Pesticide Toxicity of Increasing Concern to WRCB. Two plans currently under consideration by WRCB's Division of Water Quality highlight an increasing concern for reducing pesticide concentrations in state waters. WRCB, the Department of Pesticide Regulation (DPR), and the Imperial Irrigation District have agreed to work cooperatively to reduce pesticide concentrations in the Alamo River; the river, which discharges into the Salton Sea, is a principal drainage conduit for irrigation runoff. Frequent and high-magnitude lethality has been seen in water samples taken along the fifty miles of river which receive irrigation tailwater. Five pesticides—chlorpyrifos, diazinon, car-



bofuran, malathion, and carbaryl—appear to be major contributors to the toxicity in many Alamo River toxic samples. An interagency coordinating committee will be convened to assist in the development of practices aimed at reducing pesticides in the Alamo River to nontoxic levels.

WRCB is also in the process of developing a pesticide management plan, in conjunction with DPR, which would address issues relating to pesticides and water quality. On March 29, WRCB sent a draft plan to county agricultural commissioners and the RWQCBs for their comments; following a review period, the plan will be revised and released.

WRCB Convenes Advisory Committee on Underground Storage Tank Cleanup. At its January meeting, WRCB appointed an advisory committee on underground storage tank (UST) cleanup. The committee, which consists of chemists, biologists, health professionals, geologists, engineers, and other professionals, will conduct a comprehensive review of UST cleanup issues, including groundwater monitoring requirements, remediation techniques, and methodologies; criteria for determining whether remediation has been satisfactorily completed; cleanup standards which responsible parties are required to meet; and policies, guidelines, and methods which are used to establish those standards. On or before September 1, the advisory committee will recommend any changes necessary to ensure that cleanup standards are technologically feasible and to ensure the protection of human health, safety, and the environment.

The Board's goal is to create an impartial committee of distinguished scientists and other professionals who are neither regulators nor UST owners. A technical advisory committee already in place to represent regulators and the regulated community—the Underground Storage Tank Technical Advisory Committee—will be maintained as a resource to the advisory committee.

Among the members of the new committee are Dr. Martin Reinhard, Stanford University, chemist; Dr. Bob Spies, applied marine sciences consultant in aquatic ecology, biologist; Dr. Graham Fogg, University of California at Davis, geologist; Dr. John Farr, ICF Kaiser, engineer; Dr. Kate Scow, University of California at Davis, environmental microbiologist and soil scientist; Dr. George Apsotolakis, University of California at Los Angeles, risk assessment; and Dr. Robert Carrington Crouch III, University of California at Santa Barbara, economist.

Mono Lake Restoration Plans in Progress. As part of the amendments to

its water rights licenses mandated by the Board in September 1994, the Los Angeles Department of Water and Power (LADWP) is required to prepare and submit for approval to WRCB restoration plans for stream channels and waterfowl habitat in Mono Lake and its tributaries. [15:1 CRLR 140] LADWP submitted its draft "scope of work" document for the restoration plans to the Board on February 1; completed plans are expected to be submitted in November 1995.

On February 17, WRCB facilitated a Mono Basin Restoration Planning Meeting between all interested parties, including LADWP and the Mono Lake Committee. The topics of discussion included the formation and role of technical advisory groups (TAGS) in order to supplement areas where the existing body of information is limited (e.g., information relative to waterfowl habitat restoration), the goals and objectives of the plans, and the interim restoration to be completed while the restoration plans are under development.

Prior to WRCB's decision approving the resolution, decision, and order modifying Los Angeles' water right licenses, limited restoration work was proceeding under court order on the four tributaries of Mono Lake which had suffered ecological damage due to LADWP diversions. That venture ended in late 1994 when LADWP cut off funding to the administrative body in charge of the restoration—the court-created Restoration Technical Committee (RTC). This action created further friction between the Mono Lake Committee and LADWP; while the latter contended that its obligation to fund the interim project ceased simultaneously with the Board's final decision, the Committee insisted that the RTC was meant to continue the limited restoration project until the Board adopts a final creek restoration plan sometime in 1996.

This conflict has been resolved and a program of interim stream restoration will go forward under the direction of the three court-appointed scientist members of the RTC. The program—which will include the completion of partially finished RTC studies, the rewatering of two historical channels on Rush Creek, tree planting on Lee Vining Creek, and other projects recommended by the scientists—will be in effect until the Board's approval of a definitive restoration plan in early 1996.

Strategic Plan Development Continues. Since October 1994, WRCB has been in the process of developing a strategic plan for itself and its nine RWQCBs; the ultimate goal of the plan is to identify and address issues that will enable both the state and regional boards to become more

efficient and better able to serve water rights holders as well as the public interest. [15:1 CRLR 140; 14:4 CRLR 161–62]

In order to help develop the strategic plan, WRCB contracted with the Warner Group, a management consulting firm. On January 23, WRCB sponsored a public workshop in order for the Warner Group to receive suggestions and criticisms from interested parties, and to discuss the strengths and weaknesses of its existing water rights programs and identify suggestions for their improvement. The discussion was divided into various topics and included the following recommendations and suggestions:

- Regarding petitions and transfers, WRCB should consider modifying regulations so they are appropriate for instream uses; provide incentives/mitigation credits to allow water transfers benefitting fish and wildlife; separate public trust complaints from transfer actions; and develop a uniform set of criteria so that all water users can comply with the same rules.

- Regarding licensing, WRCB should determine if staff time can be better used on tasks other than historical use analyses; focus resources away from licenses and onto other issues; and develop a handbook in order to educate water users as to their rights within the licensing process and how they can better comply with the regulations.

- Regarding compliance and enforcement, WRCB should be more aggressive in the use of "unreasonable use" investigations, as well as other water use abuse claims, including increased field responses to complaints; ensure that staff training emphasizes neutrality, especially in the early stages; exercise discretion not to process pre-1914 (the year the Water Code was enacted) and riparian rights complaints; improve and define the complaint process, and establish time limitations and data requirements; and shift from a violation/punishment mode of enforcement to a positive inducement methodology such as monetary incentives.

- Regarding public trust issues, WRCB should establish a preliminary review process for public trust complaints; treat the Fish and Game Commission as any other complainant, and require that it provide evidence of a violation; and create a less adversarial process, perhaps by using a neutral mediator or arbitrator rather than Board staff to conduct initial meetings between parties.

- Regarding hearings, WRCB should make information available on the Internet; promote the mediation process as a supplement to or, if possible, an alternative to hearings; conduct pre-hearing ses-



sions to make preliminary decisions or use a bifurcated hearing process; incorporate the issues into the hearing decision itself rather than the current method of drafting a staff analysis; and not hold hearings until biological opinions are available.

At this writing, a draft of the strategic plan incorporating public comments made during the January workshop is expected to be released in June.

Uniform State Enforcement Policy to be Established. As a direct result of Governor Wilson's External Program Review requiring WRCB and its regional boards to identify how they can best meet their mandates to protect California's water resources while removing unnecessary red tape, WRCB is in the process of establishing a Water Quality Enforcement Policy (Policy) for the statewide preservation of water quality. [15:1 CRLR 140; 14:4 CRLR 161-62]

The purpose of the Policy is to ensure that enforcement actions among WRCB and the nine RWQCBs are consistent, predictable, and fair. A draft Water Quality Enforcement Policy issued on May 4 contains the following specific guidelines:

- Violations of WDRs or applicable statutory or regulatory requirements should result in a prompt enforcement response against the discharger. At a minimum, the RWQCBs should consider enforcement action for, among other items, major permits under the National Pollutant Discharge Elimination System (NPDES) (as defined in 40 C.F.R. Part 122.2, July 1, 1994); any incident of acute toxicity which violates WDRs, basin plans, or other provisions of law; and violations of prohibitions contained in WDRs, basin plans, or enforcement orders.

- Enforcement actions should be initiated as soon as possible after discovery of the violation. If the violation continues, the RWQCB responsible should consider escalating its response from less formal enforcement actions, such as notice of violation letters, to increasingly more formal and severe enforcement actions.

- For violations caused by a department or other entity of the State of California, the Executive Officer should notify the director or head of the department or entity and the Executive Director of WRCB of the nature of the violation, the actions needed to abate or clean up the discharge, and the potential of a WRCB or RWQCB enforcement action. Violations at federal facilities shall be handled similarly.

- WRCB and the RWQCBs should cooperate with other environmental regulatory agencies, where appropriate, to ensure that enforcement actions are coordi-

nated. When the RWQCBs become aware of a potential violation of another agency's requirements, that agency should be notified. The aggregate enforcement authority of the boards and departments of Cal-EPA should be coordinated to eliminate inconsistent, overlapping, or redundant efforts.

WRCB Initiates Rulemaking to Amend Conflict of Interest Code. On May 12, WRCB published notice of its intent to amend its conflict of interest code pursuant to Government Code section 87306. The proposed revisions would, among other things, designate employees who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests. At this writing, WRCB will accept public comments on this proposed action until July 21; no public hearing is scheduled.

Rulemaking Update. On February 18, WRCB adopted, on an emergency basis, revisions to section 2200, Title 23 of the CCR, articulating current annual fees for dischargers for releases other than stormwater. Pursuant to a 1992 amendment, these dischargers were assessed an annual fee of \$1,000 for general permits; however, the fixed fee has discouraged these dischargers from applying for coverage under a general NPDES permit because general permits are usually issued to dischargers with ratings that are low in threat to water quality and complexity.

The proposed change to the regulations would require that each general NPDES permit or general WDR be rated according to threat to water quality and complexity. This would result in annual fees less than \$1,000 in almost all cases, and would ensure statewide consistency in annual fees for discharges covered by a particular type of general NPDES permit or general WDR.

Pursuant to Water Code section 13260, WRCB's rulemaking action is exempt from review by the Office of Administrative Law; the Board's emergency changes will be in effect for 120 days.

Nonpoint Source Pollution Management Program. Technical advisory committees (TACs) comprised of over 150 volunteers representing industry, the public, environmental groups, and government have been meeting periodically since February 1994 to evaluate the effectiveness of WRCB's Nonpoint Source (NPS) Pollution Management program. [15:1 CRLR 140; 14:4 CRLR 163; 14:2&3 CRLR 174] NPS pollution is that which originates from diffuse sources such as farms, dairies, and forests; these sources are more difficult to

trace than those caused by an industrial plant or wastewater treatment facility.

WRCB met on January 25-25 to hear presentations focused on the findings and recommendations of the TACs, with each TAC addressing a different specified topic—including NPS pollution from boating and marinas, abandoned mines, pesticide management, and urban runoff. However, the TAC reports do not address several important NPS areas, such as forestry activities, which are being reviewed in a separate process conducted by the Department of Forestry. Also, the grazing TAC focused primarily on grazing on private, rather than public, lands; the irrigated agriculture TAC dealt primarily with irrigation water, to the exclusion of rainfall-included runoff; and the nutrients TAC focused on the effects of nutrients on groundwater, but omitted an examination of surface water impacts.

Based on the recommendations of the TACs, WRCB has submitted several NPS pollution implementation projects to EPA for possible funding; at this writing, fifteen of the sixteen NPS implementation projects submitted to EPA have been approved for funding. EPA indicates that approximately \$3 million will be made available, nearly \$500,000 more than originally anticipated by the Board.

LEGISLATION

AB 563 (Harvey). Existing law requires any person who has discharged or discharges waste into the waters of this state in violation of any WDR or order, or who has caused or permitted, or threatens to cause or permit, any waste to be discharged or deposited where it is or may be discharged into the waters of the state and creates or threatens to create a condition of pollution or nuisance, upon order of a RWQCB, to clean up the waste or take other necessary remedial action. As amended May 4, this bill would provide that, with certain exceptions, a local public entity is excluded from liability for costs or damages as a result of a release, or threatened release, of hazardous substances on or in a right-of-way, as defined, unless the release or threatened release was caused by actions or omissions of that local public entity, or the local public entity exacerbates the contamination as a result of the release or threatened release or impedes ongoing cleanup or abatement activities. [A. Appr]

AB 741 (Kuykendall), as introduced February 22, would prohibit WRCB or a RWQCB from subjecting the owner or operator of any publicly owned treatment works to certain enforcement actions undertaken pursuant to the Porter-Cologne



REGULATORY AGENCY ACTION

Water Quality Control Act, if the waste was discharged into the publicly owned treatment works' collection system by a third party acting independently of the owner or operator of the publicly owned treatment works. [A. *EnvS&ToxM*]

AB 1415 (Setencich). Existing law requires the state policy for water quality control to be periodically reviewed and authorizes its revision. As amended April 27, this bill would authorize a local water entity to prepare recommendations regarding state policy for water quality control. [S. *AWR*]

AB 1527 (Richter). The Porter-Colonne Water Quality Control Act prohibits a person from dredging or otherwise disturbing a toxic hot spot site that has been identified and ranked by a RWQCB without first obtaining certification, and prohibits WRCB and RWQCBs on or after January 1, 1993, from granting approval for a dredging project that involves the removal or disturbance of sediment that contains specified levels of pollutants unless WRCB or a RWQCB makes specified determinations. As introduced February 24, this bill would make technical, non-substantive changes in those provisions. [A. *Desk*]

AB 1530 (Richter). Existing law requires WRCB to provide the legislature, by January 1, 1987, with a report containing information regarding the number of applications for exemption from prohibitions on the discharge of liquid hazardous waste into surface impoundments which meet specified criteria. As introduced February 24, this bill would delete that obsolete provision. [A. *EnvS&ToxM*]

AB 1533 (Cortese). Existing law requires the beneficial use of water, including, under specific circumstances, the reservation of water to instream uses to preserve and enhance fish and wildlife resources. Existing law authorizes WRCB to approve any change associated with a water transfer only if the Board finds that the change may be made without unreasonably affecting, among other things, fish, wildlife, or other instream beneficial uses. As introduced February 24, this bill would require WRCB to prepare and maintain a registry of instream flow reservations and dedications to list all instream reservations and dedications. The bill would require the Board to establish a procedure to allow any interested party to challenge the Board's determination to make, or fail to make, an entry into the registry and whether an entry accurately reflects the judicial or administrative action or the contract which creates or affects an instream flow dedication or reservation.

The bill would require WRCB, in considering whether a diversion, change in point of diversion, place of use, purpose of use or water transfer, lease, or conveyance will unreasonably affect fish, wildlife, or other instream beneficial uses, to consider the instream flow reservations and dedications reflected in the registry. [A. *Appr*]

AB 1654 (Ducheny), as amended May 18, would authorize DWR to enter into an agreement with the state of Nevada for the purposes of conducting studies and investigations of an interstate groundwater basin, and undertaking groundwater management within that basin, if that basin is not otherwise subject to regulation by a local water entity in the state. The bill would require DWR to enter into an agreement with the state of Nevada, with regard to the Ivanpah Groundwater Basin, to prevent the overdraft of that basin and to require the extraction of groundwater in the state be for irrigation, domestic, municipal, or mining purposes. The bill would require DWR to prepare and submit to the legislature a prescribed annual report and make a statement of legislative intent concerning that basin. [A. *Appr*]

AB 1834 (Figueroa). Existing law provides that the Director of Employment Development shall permit certain public agencies to make specified use of information in the Director's possession. As introduced February 24, this bill would provide that the Director shall release information regarding employers to WRCB for the purpose of regulating the discharge of stormwater. [A. *Ins*]

AB 1845 (Cortese). Existing law requires specified urban water suppliers to prepare and submit urban water management plans to DWR. As amended April 17, this bill would require every urban water supplier to include, as part of its urban water management plan, a prescribed resource assessment of the reliability of its water service to its various categories of customers during normal, dry, and critically dry water runoff years. The bill would require the urban water supplier to include specified information in the assessment. The bill would make related legislative findings and declarations. [A. *Appr*]

SB 562 (Thompson). Under the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, owners and operators of petroleum underground storage tanks (USTs) are required to establish and maintain evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage arising from operating a UST. Existing law requires every

owner of a UST to pay a storage fee of six mills for each gallon of petroleum placed in the tank. The fees are required to be deposited in the Underground Storage Tank Cleanup Fund. The money in the fund may be expended by WRCB, upon appropriation by the legislature, for various purposes, including payment of a RWQCB's or local agency's corrective action costs, and the payment of claims to aid owners and operators of petroleum USTs who take corrective action to clean up unauthorized releases from those tanks. When corrective action is required, the owner, operator, or responsible party is required to prepare a workplan that details the specific actions required to be taken to achieve the required corrective action. [15:1 *CRLR 140*] An administrative agency delegated the authority to oversee a site investigation and remedial action pursuant to specified provisions is authorized to issue a certificate of completion which prohibits a public agency from taking specified enforcement actions, except as specified.

As amended May 15, this bill would require WRCB, by July 1, 1996, to delegate to the regional boards the authority to preapprove corrective action costs. The bill would require the Board to adopt a uniform closure letter, based on current site usage, for corrective actions which have been completed in accordance with an approved workplan, and would require the letter to contain provisions that are consistent with specified exemptions from the prohibition on public agency enforcement resulting from the issuance of a certificate of completion. The bill would authorize the Board to pay a claim for the costs of corrective action to a person who owns property on which is located a release from a petroleum UST which has been the subject of a completed corrective action and for which additional corrective action is required because of newly discovered contamination from that tank. The bill would also prohibit WRCB from reimbursing a claimant for any eligible costs paid by another party, unless a claimant provides specified documents to the Board. WRCB would be authorized to apply a specified credit for certain compensation received from other parties.

Existing law requires the Board to develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from USTs by local agencies. Under existing law, the responsible party is liable for the site-specific oversight costs, calculated as specified, which are incurred in overseeing the cleanup of an unauthorized release from a UST and the Board is required to



adopt procedures for assessing and recovering money from responsible parties. This bill would require WRCB to implement a procedure which does not assess an owner, operator, or responsible party taking corrective action pursuant to the Act for the costs of a local oversight program, and would require WRCB to institute an internal procedure for assessing, reviewing, and paying those costs directly between the Board and the local agency. [A. *EnvS&ToxM*]

SB 572 (Kelley). The Porter-Cologne Water Quality Control Act generally requires the RWQCBs to prescribe WDRs for individual waste discharges. The Act authorizes WRCB, pursuant to the petition of an aggrieved person, to prescribe WDRs if it finds a RWQCB's action, or failure to act, regarding the prescription of WDRs to be improper or inappropriate. As amended March 28, this bill would authorize WRCB to prescribe WDRs at its discretion. The bill would authorize the WRCB and any RWQCB to prescribe general WDRs for a category of discharges if WRCB or the RWQCB finds or determines that specified criteria apply to the discharges in that category. [A. *WP&W*]

SB 796 (Hayden). Existing law prohibits a person from being a member of WRCB or a RWQCB if he/she receives or has received during the previous two years a significant portion of his/her income directly or indirectly from any person subject to WDRs or applicants for WDRs. As amended April 17, this bill would instead prohibit a person from being a member of those boards if the person receives or has received during the previous two years any income directly or indirectly from a person subject to WDRs or an applicant for WDRs. [S. *AWR*]

SB 818 (Hayden). Existing law prescribes the qualifications required to be met for appointment to WRCB or a RWQCB. As amended April 17, this bill would require each member of WRCB who is required to be qualified or experienced in a specific category, and each member of a RWQCB who is required to be associated or from a specific category, to have demonstrated knowledge and experience in that category. [A. *WP&W*]

SB 900 (Costa). Under existing law, various bond acts have been approved by the voters to provide funds for water projects, facilities, and programs. As amended April 17, this bill would enact the Water Resources and Delta Restoration Act of 1996, which—if adopted—would authorize for the purpose of financing prescribed water programs, the issuance of bonds in an unspecified amount of pursuant to the State General Obligation Bond Law. The

bill would provide for the submission of the bond act to the voters at the November 5, 1996, general election in accordance with specified law. The bill would declare that it is to take effect immediately as an urgency statute. [S. *Appr*]

SB 1108 (Leslie). Under the federal Clean Water Act and the Porter-Cologne Water Quality Control Act, point source discharges of pollutants to surface waters require a waste discharge permit under NPDES program. The Porter-Cologne Water Quality Control Act prescribes various requirements relating to the discharge of mining waste. As amended May 16, this bill would authorize a remediating agency, as defined, to undertake activities that have been approved by an oversight agency, as defined, to remediate the effects of any discharge of abandoned mine waste on or from abandoned mined lands, and would provide that, notwithstanding any other provision of law, a remediating agency that has implemented an approved remediation plan, or a public agency effecting reclamation of a mine site pursuant to the Surface Mining and Reclamation Act of 1975 shall not be deemed, based on these remediation activities, to be the owner or operator of those lands or related facilities on those lands, and shall not be deemed, based on actions taken to implement the remediation plan or the reclamation, to be responsible for any discharge of abandoned mine waste on or from those lands. The bill would limit the responsibilities of a remediating agency, and make related legislative findings and declarations.

The bill would require the remediation plan for the Penn Mine property located in Calaveras County to include the terms and conditions set forth in a specified memorandum of understanding, as prescribed. The bill would prohibit the state from paying more than \$5 million to implement the remediation plan for that property, and would provide that only funds from the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund may be used for that purpose. [S. *Appr*]

SCR 20 (Kelley), as amended May 9, would request WRCB to review the appropriate rights granted to the U.S. Bureau of Reclamation for the federal Central Valley Project pursuant to state law to determine whether any evidence has been brought to the attention of the Board that may show that the Bureau has violated any terms or conditions contained in a permit or license for that project, and—if the Bureau has or may have violated any terms or conditions of a license or permit for the project—what enforcement action or other action, if any, WRCB has taken or

commenced. The measure would request WRCB, in reviewing the appropriate rights granted to the Bureau for the project, to consider any information generated as a result of the memorandum of agreement for transferring title to the CVP from the U.S. Department of the Interior to the State of California. The measure would request WRCB to report the results of the review to the legislature on or before January 1, 1996. [S. *Floor*]

AB 120 (Katz), as introduced January 12, would declare that, upon the completion of the term of an agreement to transfer water, or the right to the use of water, that is available as a result of specified water conservation efforts, the right to the use of that water shall revert to the possessor of the water right as if no change in the point of diversion, place of use, or purpose of use had occurred. [A. *WP&W*]

SB 6 (Hayden), as amended April 25, would prescribe procedures by which any person or entity may bring an action for civil penalties, declaratory relief, or equitable relief to enforce certain provisions of the Porter-Cologne Water Quality Control Act involving violations regarding state ocean and coastal waters and enclosed bays and estuaries. The bill would authorize a court to award costs to a prevailing party, including expert witness fees and reasonable attorneys' fees. The bill would require a civil penalty imposed and collected pursuant to those provisions to be distributed, as prescribed, to specified state or local agencies and to WRCB for deposit into the Fish and Wildlife Restoration and Enhancement Account, which the bill would create. The bill would require funds in the Account to be available for expenditure by WRCB, upon appropriation, for the restoration and enhancement of fish and wildlife habitats that have been adversely affected by discharges in violation of the Act. [S. *Floor*]

LITIGATION

In *Putah Creek Council, et al. v. Solano Irrigation District, et al.* and *Solano Irrigation District, et al. v. All Water Users* (Judicial Council Coordination Proceeding No. 2565), originally filed in Sacramento Superior Court in 1990, more than 5,000 people are parties to this proceeding regarding a determination of rights to the use of water in the Putah Creek stream system located in Lake, Napa, and Solano counties. The Solano Project, constructed by the U.S. Bureau of Reclamation (USBR) in the 1950s, consists of Monticello Dam, which forms Lake Berryessa, situated at the junction of Napa, Solano, and Yolo county lines. Water is released from Lake Berryessa into Putah Creek and is rediverted at the Putah



Diversion Dam into the Putah South Canal for use primarily within Solano County; water is also bypassed at the diversion dam to lower Putah Creek to protect paramount claims for water and fish.

In 1957, WRCB adopted Decision 869, approving USBR's applications for water rights permits for the Project; the permits are subject to a 33,000 acre-feet per year reservation for development above the Monticello Reservoir in Lake and Napa counties. The upstream reservation is terminated either when Solano puts Project water to full beneficial use within the Project service area or when the reservation is depleted.

Solano's contract with USBR for the entire project yield expires in 1995, and consequently Solano has been seeking federal legislation to authorize the sale of USBR's Project to it. However, U.S. Representative Vic Fazio has stated that neither he nor any other area representative will carry such legislation unless Solano has made peace with other constituents (upstream and downstream) affected by the operation of the Solano Project.

Solano is thus seeking a determination of all water use rights in the stream system and a determination that no additional water may be developed in Putah Creek above Monticello Dam under permits and licenses issued by WRCB. DFG is seeking to preserve instream flow for fish; other parties, including the Putah Creek Council, the City of Davis, UC Davis, and DFG are seeking more water below the Putah Diversion Dam for instream beneficial uses and riparian habitat.

Among the legal issues to be settled are whether congressional directives preempt application of the public trust doctrine to the operation of USBR's project, and whether all individual rights to the use of groundwater must be determined in the same proceeding.

Solano and the upstream parties in the case have negotiated a settlement that—at this writing—is expected to be implemented by August 1995. Global settlement of downstream issues has failed, and discovery is proceeding on instream flow and related issues; a trial-setting conference has been scheduled for August 1995.

In *Golden Gate Audubon Society, et al. v. State Water Resources Control Board*, No. 366984 (Sacramento County Superior Court), originally filed in 1991, several environmental groups sought to set aside WRCB's 1991 adoption of the Water Quality Control Plan for Salinity, one component of the ongoing Bay/Delta proceeding (see MAJOR PROJECTS). [11:4 CRLR 167, 172] Between 1991-93, the primary issue in the case concerned a court order

against WRCB to produce handwritten annotations which reflected the Board's deliberations regarding the Plan. The Board appealed the order and, in 1993, the California Supreme Court denied WRCB's petition for review. WRCB released the documents in March 1993.

In March 1995, the petitioners filed a motion to amend their original petition for writ of mandate to add a cause of action for violation of the Administrative Procedure Act, and to allege that the *Principles of Agreement* signed by state and federal agencies in December 1994 are void and of no effect (see MAJOR PROJECTS). On March 30, the court approved an *ex parte* order withdrawing and dismissing one of the petitioners—the Environmental Defense Fund (EDF)—from the proceeding; EDF was one of the signatories to the *Principles of Agreement*. On April 25, the remaining petitioners requested that respondents stipulate to the filing of the amended petition. At this writing, the Attorney General is preparing a response.

Committee to Save the Mokelumne River, et al. v. State Water Resources Control Board and Regional Water Quality Control Board, Central Valley Region is a state court action to determine—among other things—whether the Central Valley RWQCB was acting in its regulatory capacity when it participated in construction and operation of the impoundments on the Mine Run Dam; whether Mine Run Dam Reservoir is a point source of pollution subject to an NPDES permit; whether the RWQCB should be held liable as a discharger at the Penn Mine facility; whether the RWQCB was authorized to grant the East Bay Municipal Utility Department (EBMUD) an exemption from the Toxic Pits Cleanup Act (TPCA); and whether the Committee should be required to exhaust administrative remedies before bringing suit in connection with other impoundments at Penn Mine. [14:4 CRLR 165] In a December 1994 ruling on the Committee's motion for partial summary judgment, the court found that the state had a duty to apply for the NPDES permit. [15:1 CRLR 141] The rest of the issues will proceed to trial; at this writing, discovery is continuing.

In *People of the State of California, Department of Fish and Game, and the Regional Water Quality Control Board, Central Coast Region, et al. v. Unocal*, No. CV75194 (San Luis Obispo County Superior Court), state prosecutors contend that Unocal Corporation engaged in long-term discharges of diluent, a petroleum-based thinner used by Unocal to thin crude oil still in the ground to facilitate its recovery at the company's Guadalupe Oil Field.

In October 1994, the court overruled Unocal's demurrer. [15:1 CRLR 141; 14:4 CRLR 165; 14:2&3 CRLR 179] At this writing, a settlement conference is scheduled for September 14; a jury trial is set to begin on October 2.

Backcountry Against Dumps v. Water Resources Control Board, et al., No. 952871 (San Francisco Superior Court), and *County of San Diego v. Water Resources Control Board*, No. 665874 (San Diego County Superior Court), were filed in June 1993 to challenge the state's finding that a landfill on the Campo Indian Reservation in San Diego County meets California's environmental standards. [15:1 CRLR 142; 14:4 CRLR 165; 14:2&3 CRLR 179] Both cases were filed to meet statute of limitation requirements pending completion of the landfill permitting process; at this writing, no additional action has been taken.

Tahoe Keys Property Owners' Association v. State Water Resources Control Board, No. SV91-0164 (El Dorado County Superior Court), is an action by which Tahoe Keys Property Owners' Association (TKPOA) seeks relief from a mitigation fee charged as a condition for obtaining building permits for land around Lake Tahoe. TKPOA lost its suit to obtain a preliminary injunction against the further collection of mitigation fees and against the expenditure of funds created by mitigation fees previously collected by WRCB, the Lahontan Regional Water Quality Control Board, and the Resources Agency. [14:4 CRLR 165] After the California Supreme Court denied review of the decision denying that injunction, the Secretary of Resources allocated \$670,000 to the restoration of rivers and wetlands impacted by the Tahoe Keys project. TKPOA then filed a second lawsuit to enjoin the allocation, and, in the alternative, to stop the continued collection of the fees. After WRCB's motion to consolidate the two suits was granted, WRCB filed its opposition to TKPOA's petition for writ of mandamus. [15:1 CRLR 142] The matter was argued in December 1994, and the El Dorado County Superior Court has since denied TKPOA's petition without prejudice, so that all of the issues in the case may be tried together. Additionally, the court granted WRCB's motion to bifurcate the trial so that procedural challenges to the mitigation fee will be heard before the merits of the fee dispute itself. At this writing, a mediation session has been scheduled for June; if this session does not resolve the dispute, the case will go to trial on October 17.

City of San Diego v. California Regional Water Quality Control Board, San



Diego Region, and State Water Resources Control Board, No. 00673979 (San Diego County Superior Court), involves an \$830,000 assessment against the City of San Diego for failure to report sewage spills in a timely or accurate manner; the City sought to stay the assessment of civil liability and rescind the RWQCB's assessment order. [15:1 CRLR 142; 14:4 CRLR 165; 14:2&3 CRLR 179] On February 3, the court issued its final ruling, remanding the case to RWQCB for rehearing on the ground that there were inadequate findings linking the liability assessment to the incidents of violation.

United States and California v. City of San Diego, No. 88-1101-B (U.S.D.C., S.D. Cal.), is an action initiated by EPA more than seven years ago to force the City of San Diego to comply with Clean Water Act standards for sewage treatment. The City has argued that the standards are unnecessarily stringent, because they were developed for discharges into lakes and inland waterways rather than for ocean discharges, such as those made by the City. [15:1 CRLR 142; 14:4 CRLR 165] On April 24, the City applied to the EPA Administrator for a five-year renewable waiver from the federal sewage treatment standards required under the Act; at this writing, a tentative answer from EPA is expected in June. However, while the waiver is pending, U.S. Representative Brian Bilbray has introduced a bill to permanently exempt San Diego from the secondary treatment standards of Clean Water Act. The bill is currently under consideration in Congress.

In another development, the Sierra Club, an intervenor in the case, has asked U.S. District Court Judge Rudi Brewster to order the City to put wastewater flowing into the North City sewage reclamation plant to beneficial use. A hearing on the issue was held on May 1; at this writing, Judge Brewster has not yet issued a decision on the matter.

In *O'Neill v. United States*, 50 F.3d 677 (Mar. 14, 1995), the U.S. Ninth Circuit Court of Appeals ruled that the federal government may not be held liable for its failure to deliver the full amount of water due under a long-term water service contract with a water district, since the water could not be delivered consistently with the requirements of the Endangered Species Act (ESA) and the Central Valley Project Improvement Act (CVPIA).

In 1963, the U.S. entered into a long-term water service contract with Westlands Water District, under which the government agreed to construct the San Luis Unit of the CVP to furnish water to the District. The U.S. agreed to furnish, and

the District agreed to pay for, 900,000 acre-feet of water annually. Both parties performed on the contract until 1978, when the government maintained that the contract was invalid. From 1978-86, the U.S. required the District to enter into interim contracts which permitted the government to divert water for environmental or water quality control purposes.

In 1986, the parties stipulated to, and the court entered, a judgment ordering the government to perform on the 1963 contract. In 1990, when the Sacramento River winter-run chinook salmon was listed as a threatened species under the ESA [11:1 CRLR 125-26], the National Marine Fisheries Service concluded that the continued operation of the CVP would jeopardize the continued existence of the salmon population; in 1993, the Bureau of Reclamation announced that the District would receive only 50% of its contractual supply of water. District landowners and water users filed a motion to enforce the 1986 judgment. The government argued that compliance with the ESA and the CVPIA required it to reduce the amount of water supplied to the area.

The U.S. District Court for the Eastern District of California held that the 1963 contract did not obligate the government to furnish the full contractual amount of water when that water could not be delivered consistently with the requirements of the ESA and the CVPIA. The Ninth Circuit affirmed this holding, finding that the water service contract provided that the government was absolved from liability for water shortage on account of errors in operation, drought, or "any other causes." The court held that this phrase broadly and unambiguously contemplated the effects of subsequent congressional mandates, and concluded that "the contract's liability limitation is unambiguous and that an unavailability of water resulting from the mandates of valid legislation constitutes a shortage by reason of 'any other causes.'"

RECENT MEETINGS

WRCB met in January to receive public comment and recommendations regarding courses of action with respect to water rights issues on the Russian River; the Russian River watershed encompasses about 1,480 square miles in Mendocino and Sonoma counties and represents a considerable potential source of resource development for the surrounding communities. At this time, multiple water rights permits and applications are in limbo because of widespread concern regarding the maintenance of water levels within the main stem and tributaries of the river and the protection of fishery resources, pri-

marily Coho salmon and steelhead trout. [15:1 CRLR 143]

In written comments, the NMFS stated that it is presently considering listing the Coho salmon and steelhead trout as endangered species, due to the drastic decline in both fishery populations. In its comments, DFG described several factors caused by water diversion which have adversely affected the fish populations, including temperature, sedimentation, predation, unscreened diversions, and barriers to fish passage. As such, DFG's primary concern is that conditions in the tributaries remain status quo in order to preserve the habitat and spawning grounds of these species.

WRCB's Division of Water Rights subsequently issued a multiphased, proposed strategy for dealing with the pending water rights issues on the Russian River. The first phase of the plan entails conducting an environmental assessment of the potential cumulative effects on river flows of the pending water rights applications and developing permit terms which would avoid these cumulative impacts. Intermediate phases include processing of permits and applications showing only insignificant impacts on the watershed and those already containing terms for mitigation of local and cumulative impacts. The final phase would attempt to address present and future problems by developing a comprehensive Russian River watershed management plan that would include participation by all parties involved.

At its April meeting, the Board announced the formation of an advisory committee to assist in the implementation of its Bay Protection and Toxic Cleanup Program (BPTCP), a program established by the legislature in 1989 to provide maximum protection for beneficial uses of bays and estuaries. SB 1084 (Calderon) (Chapter 1157, Statutes of 1993) requires WRCB to convene an advisory committee representing the following interests: trade associations, dischargers required to pay BPTCP fees, environmental, public interest, public health, and wildlife conservation organizations. [13:4 CRLR 167] The advisory committee will be in place for the remainder of BPTCP's existence.

Also in April, WRCB announced funding availability under the Clean Water Act for water quality assessment and planning and nonpoint source implementation programs. Approximately \$10 million may be available for ten to fifteen water quality assessment and planning projects which will lead to healthy aquatic ecosystems and enhanced environmental conditions in local watersheds; approximately \$3 million may be available for water quality and



natural resource management projects addressing nonpoint source pollution.

In April, WRCB held its seventh annual Underground Storage Tank Conference; topics included proposed revisions to the Leaking Underground Fuel Tank manual, development of statewide cleanup standards, new state policies for designation of non-attainment zones, and UST enforcement in other states.

Also in April, WRCB staff began development of a Memorandum of Agreement with the U.S. Department of Defense (DOD) regarding funding for military base remediation and reuse. DOD will be conducting a comprehensive review of current state activities relative to facilities cleanup and reuse. Among the proposals in the model MOA are the elimination of the 1% cap for maximum state reimbursement for cleanup; an increased role for the state in prioritizing remedial actions; inclusion of UST corrective action in the MOA; and sufficient funding for the state to conduct the agreed-upon work.

On May 18-19, state and regional board members assembled to discuss a variety of statewide water quality issues at the Water Quality Coordinating Committee Meeting. Among the topics addressed were the ongoing strategic plan development process being facilitated by the Warner Group, nonpoint source pollution management, and the External Program Review (see MAJOR PROJECTS). The meeting was organized for informational purposes only and no formal action was taken.

■ FUTURE MEETINGS

For information about upcoming workshops and meetings, contact Maureen Marché at (916) 657-0990.



RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

Executive Director:

Peter Douglas

Chair: Carl Williams

(415) 904-5200

The California Coastal Commission was established by the California Coastal Act of 1976, Public Resources Code (PRC) section 30000 *et seq.*, to regulate conservation and development in the coastal zone. The coastal zone, as defined in the Coastal Act, extends three miles seaward and generally 1,000 yards inland. Except for the San Francisco Bay area (which is under the independent jurisdiction of the San Francisco Bay Conservation and Development Commission), this zone determines the geographical jurisdiction of the Commission. The Commission is authorized to control development of, and maintain public access to, state tidelands, public trust lands within the coastal zone, and other areas of the coastal strip through its issuance and enforcement of coastal development permits (CDPs). Except where control has been returned to local governments through the Commission's certification of a local coastal plan (LCP), virtually all development which occurs within the coastal zone must be approved by the Commission.

The Commission is also designated the state management agency for the purpose of administering the federal Coastal Zone Management Act (CZMA) in California. Under this federal statute, the Commission is authorized to review oil exploration and development in the three-mile state coastal zone, as well as federally sanctioned oil activities beyond the three-mile zone which directly affect the coastal zone. The Commission determines whether these activities are consistent with the federally certified California Coastal Management Program (CCMP). The CCMP is based upon the policies of the Coastal Act. A "consistency certification" is prepared by the proposing company and must adequately address the major issues of the Coastal Act. The Commission then either concurs with, or objects to, the certification.

A major component of the CCMP is the preparation by local governments of LCPs, as mandated by the Coastal Act of

1976. Each LCP consists of a land use plan (LUP) and an implementation plan (IP, or zoning ordinances). Most local governments prepare these in two separate phases, but some are prepared simultaneously as a total LCP. An LCP does not become final until both phases have been formally adopted by the local government and certified by the Commission. Until an LCP has been certified, virtually all development within the coastal zone of a local area must be approved by the Commission. After certification of an LCP, the Commission's regulatory authority is transferred to the local government, subject to limited appeal to the Commission. Of the 127 certifiable local areas in California, 84 (66%) have received certification from the Commission at this writing. The first submittal of the City of Encinitas' LCP was heard by the Commission at its November 1994 meeting in San Diego, and was certified with suggested modifications. [15:1 CRLR 143] The modified LCP was then sent back to Encinitas, approved by the City, reheard by the Commission for a final time at its May meeting in Huntington Beach, and effectively certified; the City took over permit authority as of May 15.

The Commission meets monthly at various coastal locations throughout the state. Its meetings typically last four consecutive days, and the Commission makes decisions on well over 100 items. The Commission is composed of fifteen members: twelve are voting members and are appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly. Each appoints two public members and two locally elected officials representing districts within the coastal zone. The three remaining nonvoting members are the Secretaries of the Resources Agency and the Business, Transportation and Housing Agency, and the Chair of the State Lands Commission. The Commission's regulations are codified in Division 5.5, Title 14 of the California Code of Regulations (CCR).

On May 5, Governor Wilson appointed Timothy J. Staffel, chair of the Santa Barbara County Board of Supervisors, to fill the vacant South Central Coast District Representative position on the Commission. Staffel replaces Commissioner Dorill Wright, who represented the Ventura, Santa Barbara, and San Luis Obispo